

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1834 OF 2007

Vijay Purshottam Salvi	 Applicant (Noticee no. 2)
Vs.	
State of Maharashtra & Ors.	 Respondents

Mr. S.V. Marwadi for the Applicant.
Ms. M.H. Mhatre, APP for the Respondents.

CORAM : J.H. BHATIA, J.
DATE : 7TH JUNE, 2007

P.C.

- 1) Heard Mr. Marwadi, learned counsel for the applicant and Ms. Mhatre, learned APP.
- 2) It appears that the applicant is the Secretary of a Co-operative Society and on the report dtd. 6/5/2007 lodged by opponents, offence under Section 323, 504, 509 and 506(II) of Indian Penal Code was registered. The applicant was arrested and on 9/5/2007 he was granted bail by the learned Metropolitan Magistrate, 24th Court, Borivali. Having obtained necessary permission from the learned Metropolitan Magistrate, the applicant was out of India from 11th May 2007 to 26th May 2007. On 28th May 2007, respondent no.

2, on the basis of report from Inspector of Police, Samta Nagar Police Station, issued a notice to the applicant to appear before him on 8/5/2007 and to show cause why he should not be required to execute a bond with one surety to keep peace and good behaviour. By the said notice he was directed not to leave City of Mumbai without prior permission of the Court. The applicant has challenged the issuance of said notice contending that there was no substance to issue such a notice and allegations made in the notice are false. On 9th May 2007 he was released on bail and from 11th May 2007 to 26th May 2007 he was not in the Country, while in the notice, it is mentioned that he was causing inconvenience to his opponents in the society and that he was threatening the witnesses and that inspite of being called, he has appeared in the Police Station. Mr. Marwadi contends that the respondent no. 2, who is the Assistant Commissioner of Police is vested with powers of Special Executive Magistrate, is acting high handedly.

3) Under Section 111 Cr.P.C., when show cause notice is issued, normally this Court will not interfere at that stage because it is expected that the noticee should appear and satisfy the concerned

authority as to why action should not be taken as per the notice. However, prima facie in the present case, it appears that the respondents have not acted as per law. When the applicant was already granted bail by the Court and he was also allowed by the learned Metropolitan Magistrate to go abroad, while issuing said notice under section 111 Cr.P.C., the respondent no. 2 could not have directed him not to leave Bombay city without permission of the Court. If said condition was required, it could be imposed by the concerned Magistrate while granting the bail. If necessary Police could approach the learned Metropolitan Magistrate with a request to impose such a condition. No such condition was imposed by the learned Magistrate.

4) The notice dtd. 28/5/2007 calls upon the applicant to appear in the Office of the respondent no. 2 on 8/5/2007 which is physically impossible. Ms. Mhatre, learned APP orally states that the actual date is 8/6/2007, but due to typing mistake in the Notification it is mentioned as 8/5/2007. Anyhow the fact remains that the notice which was given to the applicant on 28/5/2007 requires him to appear on 8/5/2007 which is impossible. Therefore, the applicant need not act upon that notice and to

appear before the respondent no. 2. However, the respondent no. 2 shall be at liberty to issue fresh notice, if he feels it necessary, to the applicant and if so required, the applicant shall appear before respondent no. 2. However, if after hearing him any adverse order is passed against him, such order shall not be implemented for a period of two weeks from the date of service of the copy of that order to the applicant.

5) Mr. S.B. Dhamale, PSI, Samta Nagar Police Station is present before the Court. He shall take note that no action shall be taken against the present applicant for non appearance before respondent no. 2 in response to the notice dtd. 28/5/2007.

6) With the aforesaid observations, the application stands disposed of.

(J.H. BHATIA, J.)